

Law Office of David H. Becker, LLC
833 SE Main Street # 302
Portland, OR 97214
Tel. (503) 388-9160
davebeckerlaw@gmail.com

January 22, 2014

Captain Dennis A. Lazar Jr., USN
Commanding Officer
Naval Air Weapons Station China Lake
1 Administration Circle, STOP 1014
China Lake, CA 93555-6100
chlk-wdsitecontent@navy.mil

Dept Of the Navy (OPNAV) PA/FOIA Policy Office
Freedom Of Information/Privacy Act Request
Date Received: _____ Statutory due date: _____
E-ON PA/FOIA/consult Tracking Number: _____
Acknowledgement date: _____

VIA E-MAIL ATTACHMENT – CONFIRMATION REQUESTED

Re: Freedom of Information Act Request – Searchlight Wind Energy Project

Dear Captain Lazar:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *as amended*. I make this request on behalf of Basin & Range Watch seeking information regarding the Navy’s interactions with the proposed Searchlight Wind Energy Project, near Searchlight, Nevada. Basin & Range Watch is a nonprofit public interest association dedicated to the conservation of the deserts of Nevada and California. Basin & Range Watch has a long history of interest and involvement in Bureau of Land Management (“BLM”) and U.S. Fish & Wildlife Service (“USFWS”) activities with respect to land use planning and industrial-scale energy development. Its mission is to identify threats to the desert, including from energy development, to engage in public processes to ensure that development is done responsibly or to oppose projects that are irresponsible, and to disseminate information to the public about energy development in the deserts.

The Record of Decision (“ROD”) approving the wind project requires the project proponent to obtain a Wind Turbine Curtailment Agreement with the Department of Defense (“DoD”). Basin & Range Watch understands that you and others at the China Lake Naval Air Weapons Station (“NAWS”) have been in negotiations with the proponent of the Searchlight Wind Energy Project regarding this curtailment obligation. This FOIA request concerns that Agreement and negotiations.

In this request, “Searchlight Wind Energy” means Searchlight Wind Energy, LLC and its employees, its affiliates and their employees, and its contractors and agents (including but not limited to legal counsel or consultants for the foregoing entities and individuals).

Pursuant to the FOIA, would you please send me copies of the following documents:

1. Any application submitted by Searchlight Wind Energy for a Wind Turbine Curtailment Agreement.

2. Any correspondence between personnel at the NAWS or elsewhere in the DoD or Department of the Navy (“DoN”) and Searchlight Wind Energy regarding a Wind Turbine Curtailment Agreement.
3. Any draft or final copies of any Wind Turbine Curtailment Agreement;
4. Any unclassified documents or publicly-available materials explaining the NAWS’s need for a Wind Turbine Curtailment Agreement.
5. Any other documents, including any scientific articles or reports, upon which NAWS will rely to determine whether or not to approve and sign a Wind Turbine Curtailment Agreement with Searchlight Wind Energy.

Basin & Range Watch has been closely following land use planning and energy development in the Nevada and California deserts since 2008. Basin & Range Watch remains committed to using the requested information to help assess conditions, impacts from potential projects, and management decisions on the public lands and federally-protected areas on public lands and to species managed by USFWS. Basin & Range Watch submitted comments related to the DEIS for the Searchlight Wind Project.

To that end, these documents will help clarify to Basin & Range Watch and the general public whether the NAWS, DoN, and DoD, through their activities and operations has carried out its responsibilities under all relevant statutes, regulations, and management plans with respect to the approval of a Wind Turbine Curtailment Agreement. Release of this information will benefit the public, which has an interest in knowing whether and to what extent all federal agencies are satisfying their statutory and regulatory requirements with respect to the federally-protected species in the Nevada desert. Basin & Range Watch will use the requested information to further the public’s understanding of the success of the federal government’s management of industrial scale energy projects by disseminating the information to public interest groups and agencies in Nevada via its website, media contacts, public presentations and lectures, public initiatives and coalition campaigns, public comments on agency proposals, and litigation.

Under the FOIA, the NAWS/DoN/DoD must make a determination on Basin & Range Watch’s request within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). A determination consists of a statement whether the agency will comply with request, the reasons therefore, and informs the requester of the right to appeal an adverse decision.

In the event that access to any of the records is denied, please note that the FOIA provides that if only portions of a file are exempted from release, the remainder of the file must still be released. Basin & Range Watch therefore requests that it be provided with all non-exempt portions that are reasonably segregable. In the event that access to any of the records is denied in part or in whole, Basin & Range Watch requests that you provide a full description of the item withheld, including identification of who prepared it, the affiliation or title of that person, and to whom the item was sent, along with the reason for withholding.

Request for Fee Waiver Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii)

FOIA requires that agencies waive or reduce search and copying fees where the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). In this FOIA request, Basin & Range Watch seeks records related to the federal government’s ongoing management of the Searchlight Wind Energy Project. The Project’s ROD requires Searchlight Wind Energy to obtain a Wind Energy Curtailment Agreement from NAWS/DoN/DoD to move forward, but since then the lead agency, BLM, has issued no other publicly-available information about the status of the Project or its effects on protected species.

Requester Basin and Range Watch is a Nevada, unincorporated nonprofit association that was founded in 2008. Basin and Range Watch is a group of volunteers, naturalists, artists, and writers who live, create and recreate in the deserts of Nevada and California, and who are working to stop the destruction of their desert homeland. Basin & Range Watch’s goal is to identify the problems of industrial-scale energy sprawl and find solutions that will preserve the deserts’ natural ecosystems and open spaces. Basin & Range Watch support renewable energy, but advocates for better national and state planning.

In furtherance of its mission, Basin & Range Watch maintains a website (<http://www.basinandrangewatch.org/>) on which it disseminates information to the public for free about industrial-scale energy development projects in the Nevada and California deserts. The site provides a calendar for public comment deadlines, pages related to individual projects, and links to or pdfs of important agency and scientific documents related to specific projects or to general issues related to development of energy in the southwestern deserts. In addition,

1. The request concerns the operations of government.

Basin & Range Watch’s request seeks information relevant to the potential or actual Wind Turbine Curtailment Agreement between NAWS/DoN/DoD and Searchlight Wind Energy. The Secretary of the Interior approved the Project on March 13, 2013, requiring a series of plans and permits be obtained by applicants and authorizing the grant of rights of way to Searchlight Wind Energy. Since the approval of the ROD, BLM and USFWS have provided no further information to the public regarding the status of the Project. The requested materials concern a stipulation of the ROD related to the potential curtailment of project activities if it is ever built. These will allow Basin & Range Watch, and the public, understand the NAWS/DoN/DoD operations with respect to the Searchlight Wind Project and the Project’s implementation, and to fill a gap in the lack of public information emanating from BLM and USFWS. Accordingly, the FOIA request directly implicates the operations and activities of the government.

2. The requested information is meaningfully informative in relation to the subject matter of the request and has value to the public.

The requested disclosure will increase public understanding of the NAWS/DoN/DoD’s actions in affecting the implementation of the Searchlight Wind Project. The requested

disclosure will increase public understanding of NAWS/DoN/DoD operations and how it is overseeing the progress and development of the project since the ROD was signed. The Searchlight Wind Project is a “priority” project for the BLM, and yet the public is in the dark about the Project’s status, including whether the developer is complying with the BGEPA. In addition, these records will provide recent information underlying the agency’s decision-making and afford insight into the agency’s decision-making processes. These records will allow Basin & Range Watch and the public to evaluate the agency’s decision-making and potentially question publicly the adequacy of NAWS/DoN/DoD implementation and supervision of the Project’s Wind Turbine Curtailment Agreement stipulation, facilitating public oversight of agency operations. They are critical to assessing the federal government’s actions in protecting public resources, such as desert tortoises, which must be afforded “the highest of priorities,” and the agency’s compliance with the ESA and other environmental laws.

3. The requested information is likely to contribute significantly to the public understanding of government operations or activities.

The requested records will contribute to the understanding of the public at large in that they are the actual records created or obtained by NAWS/DoN/DoD in the course of overseeing and implementing the Searchlight Wind Energy Project. The collection and dissemination of information regarding the Project’s status, and information NAWS/DoN/DoD has obtained or collected regarding the Project’s potential operations, contributes to public understanding of NAWS/DoN/DoD role in the process and can be disseminated to the local media, elected officials, and the public at large. The requested information is new, because it has not been previously disseminated to the public so far as Basin & Range Watch is aware.

Basin & Range Watch is an association that uses scientifically based advocacy to seek protection of the Nevada and California deserts, particularly with respect to the development of industrial-scale energy projects. Basin & Range Watch has submitted extensive comments and participated in public meetings and appeals related to several energy development projects.

Basin & Range Watch uses its website (<http://www.basinandrangewatch.org/>) to disseminate information free of charge to the public regarding the management of public lands and resources in the Nevada and California deserts by BLM, USFWS, and other government agencies. Basin & Range Watch disseminates information regarding public agency management of desert lands and species through its website, by distribution of this information to its members, the interested public, and public officials through formal comments and personal communications. Basin & Range Watch members regularly testify before agencies on matters involving development of energy in the deserts they love.

Basin & Range Watch is recognized as one of the public interest organization most concerned about the protection of the desert lands and species to which the requested documents related. Basin & Range Watch’s views regarding energy development in the deserts, which are based heavily on review of agency records, are widely sought by media outlets (<http://www.forbes.com/forbes/2011/0627/technology-brightsource-turtles-energy-solar-spot-tortoise.html> and <http://news.heartland.org/newspaper-article/2013/01/10/blm-rebuffs-conservation-groups-approves-california-solar-project>, for example). Basin & Range Watch has

used many forms of media, including internet and print, to reach a wider audience. The requested documents will allow Basin & Range Watch to continue this well-established activity.

The very act of a local citizen group engaging in the review of agency records created or obtained during implementation of federal statutes is “in the public interest.” The *per se* significance of the “citizen watchdog” function carried out by Basin & Range Watch is evident from federal law interpreting the FOIA. The fee waiver provision was adopted to facilitate access to agency records by what the Court described as “citizen watchdog” organizations. *See Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir.1987).

Here, significance flows also from timely public production of the requested agency records as the accepted means for the public to determine whether NAWS/DoN/DoD is properly managing its role in the development of the Project. These records will be shared with the general public and used to inform Basin & Range Watch's efforts to keep the agency accountable for responsible development of energy on the public lands. Basin & Range Watch obtaining and disseminating these documents will allow the public to better understand and comment on NAWS/DoN/DoD management of the Project's obligatory Wind Turbine Curtailment Agreement. Basin & Range Watch's contribution to the public understanding of this issue based on review and synthesis of agency records has been, and will continue to be, significant.

4. Basin & Range Watch has no commercial interest in these documents.

Basin & Range Watch is a nonprofit organization that has no commercial interest in the requested records. The materials discussed above that are produced by Basin & Range Watch, including its website and comments, are freely available to the public at no cost. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be “liberally construed in favor of waivers for noncommercial requestors” (quoting legislative history)).

In sum, Basin & Range Watch has a well-established history of effectively using public records “in the public interest,” which is the standard on which the fee waiver is granted, and accordingly, Basin & Range Watch's request for a full fee waiver should be granted.

If you have any questions regarding this request, please do not hesitate to contact me by phone at (503) 388-9160 or by email at davebeckerlaw@gmail.com. The materials requested in this FOIA relate to a pending action for construction of a transmission line and wind energy generation turbine arrays that would affect public lands and federally-protected species in the BLM Southern Nevada District. As a result, we request that you provide this information as soon as possible. You may send any or all of the requested documents via email to davebeckerlaw@gmail.com or on CD-ROM to the address at the top of page 1.

//
//
//
//

Respectfully submitted on behalf of Basin & Range Watch.

Sincerely,

A handwritten signature in black ink, appearing to read "David H. Becker", with a long horizontal flourish extending to the right.

David Becker
Law Office of David H. Becker, LLC